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Department of Water Resources
Eastern Region

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*Attorneys for the Idaho Department of Fish and Game
and the Idaho Water Resource Board*

**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 74-16187 IN THE)
NAME OF KURT W. BIRD and)
JANET E. BIRD)**
_____)

**IWRB'S & IDFG'S AMENDED
DISCLOSURE OF WITNESSES
AND EXHIBITS**

The Idaho Water Resource Board ("IWRB") and the Idaho Department of Fish and Game ("IDFG"), by and through their counsel of record, hereby amend their disclosure filed on August 14, 2019, of the identities of the witnesses that may testify, and the exhibits that may be offered as evidence, at the hearing in this matter scheduled for August 28-29, 2019. The disclosure filed on August 14, 2019, did not include Exhibit 221, which consists of four "Resolutions" adopted by the IWRB. The exhibits filed and served, however, did include Exhibit 221. The IWRB and IDFG therefore amend their original disclosure to identify Exhibit 221.

Witnesses

The following witnesses may be called by IWRB and IDFG at the hearing:

1. Cindy Yenter, Water District 170 Watermaster;
2. Jeff DiLuccia, IDFG Fishery Staff Biologist, Salmon Regional Office;
3. Cynthia Bridge Clark, IWRB Water Projects Section Manager;
4. Amy Cassel, Program Manager for the IWRB's Idaho Water Transaction Program;
5. Terry Scanlan, P.E., P.G., SPF Water Engineering; and
6. Any witnesses called by the applicants or by the other protestants to the application.

Exhibits

The Exhibits listed below are in addition to those that have already been specifically identified in the *Affidavit of Michael C. Orr in Support of Joint Motion for Partial Summary Judgment* (Jul. 30, 2019) ("*Orr Aff.*") as Exhibits 151 through 182, which are the subject of the *Joint Motion by IWRB and IDFG for Official Notice of Documents on File With IDWR Under Water Right No. 74-15613* (Jul. 30, 2019). Copies of Exhibits 151 through 182 were previously filed with the Hearing Officer and served on the parties. To avoid duplication, the descriptions of Exhibits 151 through 182 in the *Orr Aff.* are incorporated herein by this reference, and this filing does not include additional copies of Exhibits 151 through 182. In addition to those Exhibits, the following Exhibits may be offered at the hearing, and scanned copies of the Exhibits listed below are provided in .pdf files on the attached computer disk:¹

Exhibit 183: "Permit Application [no. 74-16187] through Legal Notice & Request for Comment Letters"

¹ The Hearing Officer is being provided with hard copies in addition to .pdf files.

- Exhibit 184: Water Right Transfer No. 79286
- Exhibit 185: Water Right Transfer No. 76190
- Exhibit 186: "Final Order," *In the Matter of Application for Permit to Appropriate Water, Permit No. 74-15613, in the Name of F. James and Paula J. Whittaker* (May 10, 2011) (certified copy)
- Exhibit 187: "Order Denying Petitions for Reconsideration," *In the Matter of Application for Permit to Appropriate Water, Permit No. 74-15613, in the Name of F. James and Paula J. Whittaker* (Jun. 13, 2011) (certified copy)
- Exhibit 188: "Partial Decree Pursuant to I.R.C.P. 54(b) for General Provisions in Basin 74, *In Re SRBA, Case No. 39576* (Apr. 3, 2012)
- Exhibit 189: "Memorandum Decision and Order on Challenge," *Subcase Nos. 74-15051, et al., In Re SRBA* (Jan. 3, 2012)
- Exhibit 190: "Mediator's Term Sheet" (certified copy)
- Exhibit 191: "Fact Sheet on Snake River Water Agreement" (certified copy)
- Exhibit 192: "Agreement Summary – May 2004" (certified copy)
- Exhibit 193: "2001 Conservation Agreement in the Lemhi River Basin" (Jul. 18, 2001)
- Exhibit 194: "2002-2003 Conservation Agreement in the Lemhi River Basin" (May 15, 2002)
- Exhibit 195: "Memorandum of Understanding Between the U.S. Bureau of Reclamation and Various Idaho Parties Regarding the Lemhi Basin Conservation Plan" (Jul. 10, 2002) (certified copy)
- Exhibit 196: "Memorandum of Agreement Between the State of Idaho, the Nez Perce Tribe, the United States Fish and Wildlife Service, and National Marine Fisheries Service Establishing a Collaboration Process for Making Recommendations to the State of Idaho Concerning Use of the State Section 6 Account of the Snake River Basin Adjudication Agreement of 2004 Habitat Trust Fund" (certified copy)
- Exhibit 197: "Screening and Habitat Improvement Prioritization for the Upper Salmon Subbasin (SHIPPUS) Tables"
- Exhibit 198: "Draft 4.1 Conservation Measures" (Draft Lemhi conservation plan chapter 4) (Sep. 7, 2007)

- Exhibit 199: Biological opinion regarding diversions on the Salmon-Challis National Forest in the Lemhi River Watershed prepared by the National Marine Fisheries Service ((Feb. 27, 2012)
- Exhibit 200: Memorandum regarding investigation of the administration and regulation of water right no. 74-15613, prepared by Peter Vidmar, P.E., and Terry Scanlan, P.E., P.G. of SPF Water Engineering (Jul. 17, 2019)
- Exhibit 201: "Expert Report for Application for Permit 74-16187" prepared by Jeffrey J. DiLuccia, Fishery Staff Biologist, IDFG, Salmon Regional Office (Jul. 17, 2019)
- Exhibit 202: "Flow Characterization Study – Instream Flow Assessment Big Timber Creek, Idaho" (U.S. Bur. Reclamation, Jun. 2004)
- Exhibit 203: "Upper Salmon Subbasin Habitat Integrated Rehabilitation Assessment" (Jun. 2019) (certified copy)
- Exhibit 204: "ESA Recovery Plan for Idaho Snake River Spring/Summer Chinook Salmon and Snake River Basin Steelhead" (NOAA, Nov. 2017)
- Exhibit 205: Letter from NOAA to IDWR, "Comments on Water Right Permit Application #74-16187" (Feb. 11, 2019)
- Exhibit 206: Letter from NOAA to Idaho Governor Kempthorne (Aug. 10, 2000) (certified copy)
- Exhibit 207: Letter re: "Notice of Intent to Sue for Violations of the Endangered Species Act Regarding Hayden Creek Watershed" (Oct. 3, 2000) (certified copy)
- Exhibit 208: Two letters re: Notice of Intent to Sue regarding Hayden Creek Diversions and Lemhi River Diversions" (May 18, 2001) (certified copies)
- Exhibit 209: Letter re: Notice of Intent to Sue for Violations of the Endangered Species Act Regarding the Spring/Summer Chinook, Snake River Basin Steelhead, and Upper Columbia River Bull Trout Within the Lemhi River Watershed" (Mar. 18, 2009)
- Exhibit 210: Excerpts of "Idaho State Water Plan" (Nov. 2012) (certified copies)
- Exhibit 211: Excerpts of "Idaho Department of Water Resources 2018 Director's Annual Report" (certified copies)
- Exhibit 212: "Idaho Water Transactions Program" (IWRB brochure) (certified copy)

- Exhibit 213: Printout of webpage entitled “Idaho Water Transactions Program” (printed Aug. 1, 2019) (<https://idwr.idaho.gov/IWRB/programs/water-transactions/>)
- Exhibit 214: “Idaho Water Transactions Program – Progress Report: Overview and Accomplishments 2003-2012” (certified copy)
- Exhibit 215: Excerpts of meeting materials for IWRB Streamflow Enhancement & Minimum Stream Flow Committee meeting no. 3-13 (Nov. 18, 2013) (certified copies)
- Exhibit 216: Excerpts of meeting materials for IWRB meeting No. 6-15 (Jul. 13-14, 2015) (certified copies)
- Exhibit 217: “Idaho Water Transactions Program Upper Salmon Basin Strategic Plan” (IWRB, Jul. 13, 2015) (certified copy)
- Exhibit 218: IWRB News Release, “Idaho Water Resource Board tours multiple fish-enhancement projects in the Lemhi River area, approves \$232,930 in flood management grants” (Sep. 21, 2017) (certified copy)
- Exhibit 219: Excerpts of meeting materials, IWRB meeting no. 6-18 (Sep. 13-14, 2018) (certified copies)
- Exhibit 220: Excerpts of meeting materials for IWRB meeting no. 5-19 (May 10, 2019) (certified copies)
- Exhibit 221: Four (4) IWRB “Resolutions” regarding water right subordination agreements and “not to divert” agreements in the Lemhi River and Big Timber Creek (certified copies)
- Exhibit 222: Six (6) “Conservation Easements” granted to IWRB regarding diversions under water rights in the Lemhi Basin
- Exhibit 223: Nine (9) agreements between the IWRB and water rights holders in the Lemhi Basin to purchase conservation easements or water right subordination easements
- Exhibit 224: Eight long-term (8) agreements between the IWRB and water rights holders in the Lemhi Basin “not to divert” water
- Exhibit 225: Seven (7) short-term agreements between the IWRB and water rights holders in the Lemhi Basin “not to divert” water, and a contract between the IWRB and Water District 74 for “Compensation for Water Administration Lemhi River”

- Exhibit 226: Letter from IDWR to Water District 74-W watermaster re: guidance concerning delivery of water rights 74-37, 74-39A, and 74-15213 pursuant to approved transfer no. 74720 owned by Leadore Land Partners/Karl Tyler (Sep. 24, 2010) (certified copy)
- Exhibit 227: Printout of working spreadsheet of IWRB water transactions in the Lemhi Basin (printed Aug. 9, 2019)
- Exhibit 228: Letters from IDWR to watermasters of Water Districts 74 and 74-W re: Special Local Watermaster Workshop: Water Delivery and Potential Impacts on fish (Mar. 28, 2001) (certified copies)
- Exhibit 229: Printout of *Idaho Watershed Project v. Jones*, 253 Fed. Appx. 684 (2007)
- Exhibit 230: "Complaint" filed in *Western Watershed Project v. Wood, et al.* (D. Idaho Case no. 09-cv-368) (Jul. 29, 2009)
- Exhibit 231: "Complaint" filed in *Idaho Watersheds Project v. Whitworth, et al.* (D. Idaho) (Dec. 19, 2000)
- Exhibit 232: "Partial Decree Pursuant to Rule 54(b), I.R.C.P.," *In the Matter of General Determination of the Rights to the Use of the Surface Waters and Tributaries from Whatever Source of the Lemhi Drainage Basin* (Dec. 30, 1982)
- Exhibit 233: "Stipulation Resolving General Objections," and Exhibits A & B, *In the Matter of General Determination of the Rights to the Use of the Surface Waters and Tributaries from Whatever Source of the Lemhi Drainage Basin* (Dec. 14, 1981)
- Exhibit 234: Flow Restoration Accounting Framework (RAF)
- Exhibit 235: IWRB contracts for stream gaging services


The IWRB and IDFG reserve the right to submit additional exhibits, such as those necessary for rebuttal of any witnesses or exhibits, and to use any official documents that are included within IDWR's files for the water rights identified at the hearing on this matter.

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DATED this 19th day of August, 2019.

LAWRENCE G. WASDEN
Attorney General
DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division



MICHAEL C. ORR
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 19th day of August 2019, I caused the original of the foregoing to be filed with the Idaho Department of Water Resources, and copies to be served upon the following, in the manner listed below:

1. Original to:

JAMES CEFALO IDAHO DEPARTMENT OF WATER RESOURCES 900 N. SKYLINE DR., STE A IDAHO FALLS, ID 83402-1718	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input checked="" type="checkbox"/> Facsimile: 208-525-7177 <input checked="" type="checkbox"/> Email: james.cefalo@idwr.idaho.gov
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2. Copies to the following:

IDAHO DEPARTMENT OF WATER RESOURCES ATTN: JEAN HERSLEY, TECHNICAL RECORDS SPECIALIST II 322 E. FRONT STREET, SUITE 648 BOISE, ID 83720-0098	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Statehouse mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile:
ROBERT L HARRIS HOLDEN, KIDWELL, HAHN & CRAPO PLLC 1000 RIVERWALK DR., STE 200 P.O. BOX 50130 IDAHO FALLS, ID 83405	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> Email: rharris@holdenlegal.com
MARIE CALLAWAY KELLNER MATTHEW A NYKIEL IDAHO CONSERVATION LEAGUE P.O. BOX 2308 SANDPOINT, ID 83864	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> Email: mkellner@idahoconservation.org mnykiel@idahoconservation.org
TRAVIS L THOMPSON BARKER ROSHOLT & SIMPSON LLP 163 SECOND AVE WEST	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express

P.O BOX 63 TWIN FALLS, ID 83303-0063	<input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> Email: tlr@idahowaters.com
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